

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0045**

**Use Tax**

**For Calendar Years 1996, 1997, and 1998**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Use Tax – Imposition**

**Authority:** 45 IAC 2.2-3-4; 45 IAC 2.2-3-8(a); 45 IAC 2.2-3-12; 45 IAC 2.2-3-19; 45 IAC 2.2-3-25

Taxpayer protests the imposition of use tax.

**II. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**III. Tax Administration – Interest**

**Authority:** IC 6-8.1-10-1

Taxpayer protests the interest assessed.

**STATEMENT OF FACTS**

Taxpayer is an Indiana contractor that sells and applies industrial floor coverings such as epoxy, urethane, resins, and hardeners to customers' floors on a lump sum basis. Taxpayer did not pay sales tax and had no use tax accrual system in place although it has had three different CPA firms in the last four years. Taxpayer applied for a RRMC number in February 1996.

Taxpayer makes no taxable sales, however, upon audit it was discovered the taxpayer failed to self assess use tax for clearly taxable items such as equipment, tools, office supplies, T-shirts and materials used on lump sum contracts. Taxpayer purchased materials such as epoxies, resins, and hardeners used to cover floors on buildings he does not own pursuant to a contract that includes all elements of cost in the total contract price. The purchases are taxable per 45 IAC 2.2-4-22(e).

Taxpayer's hearing was scheduled for Thursday, March 9, 2000. Taxpayer did not call because it had a telephone conversation with the hearing officer on March 1, 2000. In the telephone conversation, taxpayer stated it only protests the penalties. This letter of findings, however, will address all issues as protested in taxpayer's letter dated December 28, 1999.

**I. Use Tax - Imposition**

**DISCUSSION**

Taxpayer requested a waiver of the tax because a prior CPA advised that his type of work was industrial processing and not subject to sales or use tax, it was the first and only audit the company has had in regard to the issue, and the audit reflected a substantial amount of tax due.

Taxpayer's representative, in a discussion on March 1, 2000, states it no longer protests the issue.

**FINDING**

Taxpayer's protest is denied.

**ISSUE**

**II. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer requests all penalties be abated because a prior CPA advised that no sales or use tax was due.

The Indiana Code and Regulations are clear regarding the self-assessment of tax where no tax is charged.

Taxpayer has not provided reasonable cause to allow the department to waive the penalty. Taxpayer should have had use tax procedures in effect to assure tax is paid.

### **FINDING**

Taxpayer's protest is denied.

### **III. Tax Administration – Interest**

### **DISCUSSION**

Taxpayer protests the interest assessed.

IC 6-8.1-10-1 does not allow the waiver of interest.

### **CONCLUSION**

Taxpayer's protest is denied for Issues I, II, and III.